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W.P.(MD)No.4153 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.11.2022

PRONOUNCED ON : 24.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4153 of 2014
and
M.P.(MD)Nos.1 and 2 of 2014

P.C.Paulraj

... Petitioner

vs.

1.The Chairman,
Tamilnadu Newsprint and Papers Limited,
(A Government of Tamilnadu Enterprise),
No.67, Anna Salai, Guindy,
Chennai 600 032.

2.The Deputy Managing Director,
Tamilnadu Newsprint and Papers Limited,
(A Government of Tamilnadu Enterprise),
No.67, Anna Salai, Guindy,
Chennai 600 032.



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- 3.The Director (Operations),
Tamilnadu Newsprint and Papers Limited,
(A Government of Tamilnadu Enterprise),
Kagithapuram 639 136,
Karur District.
- 4.The Chief General Manager (Finance),
Tamilnadu Newsprint and Papers Limited,
(A Government of Tamilnadu Enterprise),
Kagithapuram 639 136,
Karur District.
- 5.The Deputy General Manager (Finance),
Tamilnadu Newsprint and Papers Limited,
(A Government of Tamilnadu Enterprise),
Kagithapuram 639 136,
Karur District.
- 6.The Principal Accountant General,
Office of the Principal Accountant General,
(Economic and Revenue Sector Audit),
“Lekha Pariksha Bhavan”,
361, Anna Salai, Chennai- 600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in HR/05/2535, dated 29.10.2013, by confirming the office order of



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the 3rd respondent in HR/05/2535, dated 20.09.2013, dismissing the petitioner from service and to quash the same as illegal and consequently, to direct the respondent nos.1 to 5 to reinstate the petitioner with all service and attendant benefits within a time frame that may be stipulated by this Court.

For Petitioner : Mr.P.Krishnasamy
For R1 to 5 : Mr.M.P.Senthil
For R6 : Mr.P.Gunasekaran

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent in HR/05/2535, dated 29.10.2013, by confirming the office order of the 3rd respondent in HR/05/2535, dated 20.09.2013, thereby dismissing the petitioner from service and consequently, to direct the respondent 1 to 5 to reinstate the petitioner with all service and attendant benefits within a time frame that may be stipulated by this Court.



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2. The brief facts of the case are that the petitioner is a qualified Chartered Accountant, had 16 years' experience in serving various companies in Madurai, Chennai and Trivandrum, also had the experience of private practice for about 5 years and also had the opportunity of working in Kingdom of Saudi Arabia for two years. The petitioner was appointed as a Manager (Finance and Accounts) in the first respondent's company on 04.04.2008 as per the proceedings, dated 17.03.2008. Subsequently, he was re-designated as Senior Manager (F&A) from 04.04.2009 onwards. A charge sheet, dated 27.08.2012, was issued by the 3rd respondent for initiating disciplinary action for the allegation that the petitioner was habitually late in attending the office. While the petitioner was requesting the management for certain details, documents and clarifications so as to give explanations with regard to charge sheet, dated 27.08.2012, another charge sheet, dated 24.10.2012 was also issued. Then the petitioner was placed under suspension on 24.09.2012.



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3. The contention of the petitioner is that the second charge sheet, dated 24.10.2012, was voluminous and no specific charges were levelled against the petitioner, moreover the respondents denied even minimum time to submit his explanations. A domestic enquiry was held, but it is an empty formality and an eye-wash. Without even furnishing the copy of the domestic enquiry report, dated 12.08.2013, a second show cause notice was issued on the very next day, i.e., on 13.08.2013, to submit explanation for the proposed punishment. Thereafter, considering the petitioner's explanation without application mind, the respondents imposed the punishment of dismissal from service, vide order, dated 20.09.2013. The petitioner preferred an appeal and the same was dismissed, vide order, dated 29.10.2013.

4. The petitioner filed a writ petition before this Court in W.P.(MD)No. 10712 of 2013, against the respondent 2 to 5 which includes the Enquiry Officer for direction to the Enquiry Officer to accept the documents submitted by the



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petitioner during the course of domestic enquiry as Defence Exhibits and permit the petitioner to cross-examine the Management witnesses based on the Management Exhibits and Defence Exhibits. The petitioner had listed out many irregularities committed by the management of TNPL along with the supporting documents in the said writ petition. Also submitted objections for the excess payment of Rs.45,32,201/- to M/s. Clariant (India) Ltd and passed the bills without deducting the excess amount. The petitioner was seeking clarifications to prepare, verify and approve thousands and thousands of bills relating to Paper Mill III projects worth Rs.1100 crores. The sanctioning of amount is against the basic principle of delegation of power, Internal Control system and Internal Audit System of the company in the revised assignment of work, since such an assignment can create scope for financial irregularities and fraud.

5. The petitioner also questioned the financial concurrence (approval) granted to Sam Consultancy Service, who damaged the existing computer



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software Online Integral Information System (OIIS) causing delay in payment of bills worth crores of rupees for more than one year and forcing the company to seek new Entrepreneurs Resource Project (ERP) worth at about Rs.30 Crores. He also questioned the finance concurrence granted to the repeated orders to the highest rate quoted contractors namely MMK Navarathinam, Sri Anjaneya and Company without finalizing the tenders in favour of lowest rate quoted contractors namely C.K.Traders and K.Ravi Kumar. In the meanwhile petitioner submitted a petition under the provision of Right to Information Act, 2005, through his advocate. Based on those records, the petitioner submitted that the respondents are committing financial frauds. He also stated that since the petitioner would bring out the financial frauds committed by the respondents, they had taken action against the petitioner under the guise of initiating disciplinary proceedings. Therefore, the petitioner prayed to allow the writ petition.



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6. The respondents 1 to 5 have filed a counter affidavit stating that Tamil Nadu Newsprint and Papers Limited is an undertaking of Government of Tamil Nadu. The total equity capital held by the Government of Tamil Nadu over the respondent Company is only 35.32% and the remaining 64.68% of the equity is held by Indian Financial Institutions, Insurance Companies, Indian Public, Non-Resident Indians, Overseas Corporate bodies and the employees of the respondent Company. Therefore, the direct equity holding of Government of Tamil Nadu is far less than the limit laid down under Section 617 of the Companies Act, 1956. Therefore, the respondents 1 to 5 submitted that the respondent Company cannot be considered as a "State" or "Instrumentality of State" within the meaning of Article 12 of the Constitution of India and hence this writ petition is not maintainable. Moreover the allegations are vague and bereft of material particulars and in view of the same the writ petition ought to be dismissed. Instead of filing a Public Interest Litigation, the petitioner had filed the present writ petition. The petitioner was appointed as Manager (F & A) and he demanded



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that the bills will be approved only if the bills are certified and approved by the Officer in the Accounts Department which is against the rules and regulations. The petitioner insisted the same vide note sent in e-mail, but subsequently withdrew his note and apologised. As far as the petitioner's performance it was rated as poor in the traits of adaptability, commitment and discipline in addition to his habitual late coming to the office in the morning and not staying late to complete the work in the evening.

7. The perusal of the petitioner's attendance records would show that the petitioner had come late to the office in the morning for about 157 days during the period from 20.09.2011 to 25.08.2012. Hence, show cause notice was issued. Subsequently, the petitioner was placed under suspension and a charge sheet, dated 24.10.2012, was issued alleging that the petitioner divulged confidential information relating to the respondent Company to one S.Rajalingam, Advocate, Paramathi Velur, Namakkal District, who is a Right to Information Activist. The



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petitioner divulged information, which he came to know in course of employment while discharging his official duties, to an outsider who had send RTI petition. The petitioner was indulging in various baseless allegations, adverse criticism and derogatory remarks against the actions of the executives of the Company. Moreover he was negligent, neglect of work, dishonesty, insubordination, subversive of discipline, misuse of amenity, betrayal and breach of trust. The petitioner has not submitted any explanation in reply to aforesaid two charge sheets issued to him. Without submitting explanation, the petitioner started sending letters to the disciplinary authority one after another seeking unwanted clarification not connected to the charges levelled against him. Officially, an Advocate was appointed to conduct an enquiry. The petitioner raised irrelevant question in the enquiry. He was advised to raise questions relevant to the charges and to the filed documents. Aggrieved over the advice of the enquiry officer, the petitioner filed W.P.(MD)No.10712 of 2013 and this Court directed to complete the enquiry proceedings in the above writ petition. Hence, the enquiry was



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conducted on 09.08.2013 and the enquiry officer has submitted his report on 12.08.2013, in which he has considered the evidence, documents and statements of the management, then the written depositions and documents filed by the delinquent officer and held that the charges levelled against the petitioner are proved. Subsequently, the 2nd show cause notice, dated 13.08.2013, was issued. The petitioner submitted his explanation on 30.08.2013. After satisfying the relevant provisions and the procedures, the petitioner was imposed with a punishment of dismissal from service. Hence, the respondents submitted that the writ petition ought to be dismissed, since the petitioner has accepted that he sought professional advice of the Advocate and obtained information under Right to Information Act.

8. Heard Mr.P.Krishnasamy, learned Counsel appearing for the petitioner, Mr.M.P.Senthil, learned Counsel appearing for respondents 1 to 5 and Mr.P.Gunasekaran, learned Counsel appearing for 6th respondent.



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9. It is seen that at the time of appointment, confidentiality and non-disclosure agreement was entered between the petitioner and the respondents and the petitioner executed the same on 04.04.2008. In the said agreement, as per clauses the petitioner shall not disclose the financial information to outsiders and the petitioner had signed the said agreement. In the present case, the petitioner has engaged one Advocate who would submit a petition under Right to Information Act. The petitioner has acted as a Public Information Officer and has given the information. The claim of the petitioner is that the respondents were indulging in fraud, especially financial fraud by paying excess amount to the Directors, to the Service Companies, thereby paid excess payment of Rs. 45,32,201/-. When this was brought to the knowledge of the petitioner, the petitioner has intimated the same to the higher officials. After intimation, the respondents have re-worked the records and has reduced the liability of the Company to Rs.13,51,069/- for the reasons best known to the respondents. In order to bring out these financial frauds, the petitioner has accepted that he has



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drafted the questionnaire in his own personal computer and had given it to the Advocate. And the Advocate has submitted the said questionnaire in his letter head and the questions are verbatim the same. This was found out when the petitioner was preparing the questionnaire in his own computer. On that particular day the petitioner was not in his seat but his personal computer was not closed and it was open, which had created suspicion. Hence one of the officer had visited the petitioner's chamber, on verifying the computer it was found that the petitioner is recording the company's information in the pendrive. The pendrive was seized immediately.

10. The contention of the petitioner is that there was fraud and in order to bring out the fraud he engaged the Advocate, who in turn had submitted petition under RTI Act and the petitioner would act as Information Officer and would furnish the particulars and there is no intention to defraud the company. But the contention of the respondents is that the petitioner had divulged the information



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12. Hence, this Court is of the considered opinion that instead of dismissal from service, compulsory retirement shall be imposed on the petitioner. Hence, this Court is modifying the punishment as compulsory retirement and the date of compulsory retirement shall be the date of dismissal i.e., 20.09.2013. The respondents shall implement this punishment and grant consequential service and monetary benefits to the petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

14. Before parting with the judgment, this Court hopes that the respondents would take appropriate action to check its mis-management of paying excess



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amount and take proper business decision and also would check if any financial fraud is committed and if committed, would take appropriate action.

Index : Yes / No

24.03.2023

Internet : Yes

NCC : Yes / No

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S.SRIMATHY, J

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